



April 24, 2017

National Freedom of Information Officer
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2822T)
Washington, DC 20460
By Email: hq.foia@epa.gov

Re: Freedom of Information Act Request; Fee Waiver Requested

Dear Sir/Madam:

Pursuant to the Freedom of Information Act (5 U.S.C. § 552, *et seq.*), and the regulations thereunder, I am writing on behalf of the Competitive Enterprise Institute (CEI), a non-profit 501(c)(3) public-interest group, to request access to and copies of the following documents:

1. Records in the Office of Civil Enforcement or Office of Air & Radiation, and emails to or from employees in these offices, created or dated on any date from April 1, 2017 through April 14, 2017, containing the words (1) “Volkswagen” or “VW” and (2) “plan” or “settlement.”
2. Communications (including emails) with the New York Attorney General or the New York Attorney General’s office concerning any proposed or actual settlement with Volkswagen, or Volkswagen’s “national ZEV investment plan,” where such communications occurred on any date from April 1, 2017 through April 14, 2017.

Please provide the documents in electronic form (except for documents that do not exist in electronic form), unless it would be cheaper to obtain paper copies.

We request that your office waive charges pursuant to 5 U.S.C. § 552(a)(4)(iii) & 40 C.F.R. 2.107(c)(1) and (d)(1), since, as is explained below, disclosure is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government and is not primarily in the commercial interest of the requestor.¹ Even if you do not

¹ The subject of this request concerns “the operations or activities of the government,” such as EPA’s activities in relation to the VW settlement. This is a matter of public interest, *see, e.g.*, William Yeatman, *Obama’s Electric Car Money Grab*, Wall Street Journal, Nov. 2, 2016, and this request is “likely to

waive the charges pursuant to those provisions, we request in the alternative that your office waive charges for the first 100 pages and first two hours of search time.²

We request this on the basis that CEI is a nonprofit, tax-exempt, public-interest organization, with formal research, educational, and publication functions as part of its mission, and because release of these records will serve the public interest by contributing significantly to the public's understanding of government operations, the shaping of public policy, and how taxpayer money is spent. This FOIA request is not for commercial use.³ In the past, CEI FOIA requests to EPA have generated data and other useful information that was of interest to the public, information featured in news articles and commentary.⁴

The matter that is the subject of this FOIA request is a matter of public interest, as is reflected in recent press coverage.

If our fee waiver is denied, we are willing to pay up to \$100.00, and in the event of any appeal as appropriate and regardless of that outcome or your response to this fee waiver request, we request the search and document production proceed in the interim. (If there are any such charges, please provide an invoice for the time incurred and cost for each document for which more than \$15.00 is sought).

contribute” “significantly” to public understanding of such activities through disclosure of the requested records.

² See, e.g., 40 C.F.R. 2.107(c)(1)(iv).

³ Nor would it primarily further or advance any commercial interest. Also, CEI is not a trade association.

⁴ See, e.g., Stephen Dinan, *Do Text Messages from Feds Belong on Record? EPA's Chief's Case Opens Legal Battle*, Washington Times, April 30, 2011, at A1 (news coverage based on documents obtained by CEI's Christopher Horner); Stephen Dinan, *EPA Staff to Retrain on Open Records; Memo Suggests Breach of Policy*, Washington Times, April 9, 2013, at A4 (EPA stepped up records-management training based on “admission” that some staff had “fallen short” on complying with EPA rules, a practice uncovered by CEI); Stephen Dinan, *Suit Says EPA Balks at Release of Records; Seeks Evidence of Hidden Messages*, Washington Times, April 2, 2013, at A1 (CEI's Horner “uncovered that” regional official was “using private email addresses to conduct official business”).

Information obtained by CEI through FOIA requests ends up in editorials, news coverage, and Congressional testimony. See, e.g., Trey Kovacs & Alex Habighorst, *Time for an Official End to Federal Employee Union Subsidies*, Washington Examiner, June 5, 2013, <http://washingtonexaminer.com/op-ed-time-for-an-official-end-to-federal-employee-union-subsidies/article/2531217> (Op-ed by CEI staff citing documents obtained in CEI FOIA requests); *Written Statement of Hans Bader, Senior Attorney, Competitive Enterprise Institute, U.S. House of Representatives Committee on Oversight and Government Reform, Subcommittee on Regulatory Affairs, Hearing Entitled Lasting Implications of the General Motors Bailout*, June 22, 2011, <http://www.scribd.com/doc/58462911/Hans-Bader-Statement-for-Regulatory-Affairs-Subcommittee>.

CEI's interest in the documents springs from its efforts to educate the public, scholars, and state and federal regulators on matters of government operations.⁵ The general and policy-oriented public will benefit from the dissemination of the information requested, since CEI's professionals are widely-published about these subjects,⁶ including the subject of this FOIA request,⁷ and other issues related to energy and the environment (such as a CEI staffer's objection to proposed EPA budget cuts.)⁸

CEI publishes about these and other issues in print and electronic media, as well as newsletters to legislators, education professionals, and other interested parties,⁹ and thus qualifies as a press

⁵ CEI is widely quoted by the press. *See, e.g.*, JulieAnn McKellogg, *US Supreme Court Hears Massive Wal Mart Discrimination Case*, Voice of America, March 29, 2011 (quoting CEI's Hans Bader about *Wal-Mart v. Dukes*, a Supreme Court discrimination case) (available at 2011 WLNR 6155680); Al Neuharth, *Why Bail Out Bosses Who Messed It Up*, USA Today, Nov. 21, 2008, at 23A (quoting CEI) (available at 2008 WLNR 22235170); Bill Shea, *Agency Looks Beyond Criticism of Ads of GM Boasting About Repaid Loan*, Crain's Detroit Business, May 17, 2010, at 3 (available at 2010 WLNR 10415253) (citing CEI); William P. Hoar, *Bailing Out Scam Artists*, New American, October 13, 2008, at pg. 42 (quoting CEI's Bader); Mark Tapscott, *GM Named in Deceptive Advertising Complaint Filed With FTC*, Washington Examiner, May 4, 2010 (www.washingtonexaminer.com/opinion/blogs/beltway-confidential/GM-named-in-deceptive-advertising-complaint-filed-with-FTC-92788939.html) (same).

⁶ For example, the author of this letter, a CEI employee, routinely writes about government policies and services. *See, e.g.*, Hans Bader, *Time to End Obama-Era Fed Micromanagement of Colleges Under Title IX*, CNS News, Feb. 22, 2017 (www.cnsnews.com/commentary/hans-bader/time-end-obama-era-fed-micromanagement-colleges-under-title-ix); *Not All Court Rulings Consistent With 'Dear Colleague Letter'*, Chronicle of Higher Education, Feb. 15, 2017 (www.chronicle.com/blogs/letters/not-all-court-rulings-consistent-with-dear-colleague-letter); *Tenure Also Protects Good Teachers*, Wall Street Journal, June 19, 2014, at A14; *On Colleges and Evidence Standards*, Letter, Wall Street Journal, May 20, 2014, at A12; *Disparity Reflects a Sad Reality*, Richmond Times-Dispatch, April 23, 2014, at A10; *EEOC Demands Imperil the Public*, Washington Times, Jan. 12, 2012, at B2; Bader, *Arne Duncan vs. Fairness and the Rights of the Accused*, Letter, Wall Street Journal, Sept. 25, 2014, at A20; *Denied Due Process*, Boston Herald, June 20, 2014, at 18; *Punishment Without Trial: The Department of Education Attacks Students' Due Process Rights*, Daily Caller, May 23, 2014; Letter, *Mr. Franken's Arbitration Amendment*, Washington Post, Oct. 29, 2009, at A18; Letter, *Fair Means Fair; Evidence Must Count for Something*, Wall Street Journal, July 21, 2011, at A16.

⁷ *See, e.g.*, William Yeatman, *Obama's Electric Car Money Grab*, Wall Street Journal, Nov. 2, 2016 (available at <https://cei.org/content/obama%E2%80%99s-electric-car-money-grab> and subscription only at <https://www.wsj.com/articles/obamas-electric-car-money-grab-1478041904>).

⁸ *See, e.g.*, William Yeatman, *Proposed EPA Budget Cuts Raise Serious Concerns*, CEI Blog, March 3, 2017 (<https://cei.org/blog/proposed-epa-budget-cuts-raise-serious-concerns>).

⁹ *See EPIC v. DOD*, 241 F.Supp.2d 5 (D.D.C. 2003) (court ruled that the publisher of a bi-weekly electronic newsletter qualified as the media, entitling it to a waiver of fees on its FOIA request); *Forest Guardians v. U.S. Dept. of Interior*, 416 F.3d 1173, 1181-82 (10th Cir. 2005) (fee waiver granted for group that "aims to place the information on the Internet"; "Congress intended the courts to liberally construe the fee waiver requests of noncommercial entities").

entity for purposes of FOIA.¹⁰ This status is an additional, alternative basis for waiving fees that might otherwise be charged, such as search and review costs, and the costs of duplicating the first 100 pages of responsive records. *See* 40 C.F.R. § 2.107(b)(6)&(d)(1).

Those activities are in fulfillment of CEI's mission. The information received will be disseminated through one or more of the following: a) newsletters, (b) opinion pieces in newspapers or magazines, (c) CEI's web sites and blogs which receive approximately 80,000 monthly visitors (approximately 40,000 unique) and are published on most days,¹¹ (d) in-house publications for public dissemination, (e) other electronic journals including daily blogs and newspaper blogs to which our professionals contribute,¹² (f) local and syndicated radio programs dedicated to discussing public policy, (g) to the extent that Congress or states engaged in relevant oversight or related legislative or judicial activities find that which is received noteworthy, it will become part of the public record on deliberations of the legislative branches of the Federal and

¹⁰ See the attachment to this letter, a letter from EPA granting CEI a waiver of fees under FOIA.

¹¹ *See, e.g.*, <https://cei.org/blog> (one of several blogs operated by CEI providing daily coverage of legal and regulatory issues); www.globalwarming.org (another CEI blog).

¹² *See, e.g.*, <http://www.cnsnews.com/author/hans-bader> (roughly 150 articles by CEI's Bader from 2013 through this month); <http://washingtonexaminer.com/author/hans-bader> (web page showing dozens of commentaries by CEI's Bader in the *Washington Examiner*); <http://libertyunyielding.com/author/hanbcompent/> (hundreds of Bader blog posts).

State Governments on the relevant issues. CEI is regularly cited in newspapers,¹³ law reviews,¹⁴ and legal and scholarly publications, including about environment and energy-related issues.¹⁵

¹³ See, e.g., Danny Vinik, *The hidden impact of Trump's energy executive order*, Politico, March 30, 2017 (www.politico.com/agenda/story/2017/03/the-hidden-impact-of-trumps-energy-executive-order-000384) (quoting CEI's William Yeatman); Michael Bastasch, *EPA May Rewrite Obama-Era Regulation That Shut Down Coal Plants*, Daily Caller, April 19, 2017 (same) (<http://dailycaller.com/2017/04/19/epa-may-rewrite-obama-era-regulation-that-shut-down-coal-plants/>); George Will, *Obama's Speech Police*, Washington Post, May 26, 2013, at A17 (quoting CEI's Hans Bader); Cathy Young, *Yet Another Governmental Overreach*, Newsday, May 28, 2013 (same); Ramesh Ponnuru, *Colleges: New Sexual Harassment Rules Defy Reason*, St. Paul Pioneer-Press, July 24, 2013, at A14 (same); *Yet Another Federal Attack on Civil Liberties*, Cincinnati Enquirer, May 26, 2013, at F5 (same); Greg Victor, *Subsidizing Madness*, Pittsburgh Post-Gazette, March 27, 2011, at E4 (citing Hans Bader of CEI); Mona Charen, Creators Syndicate, *You Might Suppose That President Obama Has His Hands . . .*, Bismarck Tribune, June 10, 2009, at A8 (syndicated columnist quoted CEI's OpenMarket blog); Hal Davis, *Earth's Temperature Is Rising and So Is Debate About It*, Dayton Daily News, April 22, 2006, at A6 (citing CEI's GlobalWarming.Org); Washington Examiner, August 14, 2008, pg. 24, *Think-Tanking* (reprinting relevant commentary from CEI's OpenMarket); Mark Landsbaum, *Blogwatch: Biofuel Follies*, Orange County Register, Nov. 13, 2007 (citing OpenMarket) (available in Westlaw news database at 2007 WLNR 23059349); Pittsburgh Tribune-Review, *Best of the Blogs*, Oct. 7, 2007 (citing CEI's OpenMarket) (available in Westlaw news database at 2007 WLNR 19666326).

¹⁴ See, e.g., Audrey Latourette, *Title IX Office of Civil Rights Directives*, 23 Journal of Law, Business & Ethics 1, 15 (2017) (citing CEI's Hans Bader); Stephen S. Worthington, *Gaps in the Armor: Predictors of Civil Rights Complaints in Pennsylvania's Elementary and Secondary Schools*, 46 Journal of Law & Education 57 (2017) (same); Richard A. Epstein, *The Role of Guidances in Modern Administrative Procedure*, 8 Journal of Legal Analysis 47, 78 (2016) (same); Carrie Lynn Flores, *Translation Services Not Required: The Civil Rights Act of 1964 Does Not Require Special Accommodations for Limited English Proficiency Individuals*, 15 Harvard Latino Law Review 193, 198 fn. 24 (2011) (same); Carter T. Coker, *Hope-Fulfilling or Effectively Chilling? Reconciling the Hate Crimes Prevention Act With the First Amendment*, 64 Vanderbilt Law Review 271, 283 fn. 73, 289 fn.103 & 106, 209 fn. 106 (2011) (same); Robert Hardaway, *The Great American Housing Bubble*, 35 University of Dayton Law Review 33, 34 (2009) (same); Bruce Yandle, *Bootleggers, Baptists, and the Global Warming Battle*, 26 Harvard Environmental Law Review 177, 221 & fn. 272 (citing CEI's GlobalWarming.Org); Deepa Badrinarayana, *The Emerging Constitutional Challenge of Climate Change: India in Perspective*, 19 Forham Environmental Law Review 1, 22 & fn. 119 (2009) (same); Kim Diana Connolly, *Bridging the Divide: Examining the Role of the Public Trust in Protecting Coastal and Wetland Resources*, 15 Southeastern Environmental Law Journal 1, 15 & fn. 127 (2006) (same); David Vanderzwaag, et al., *The Arctic Environmental Protection Strategy, Arctic Council, and Multilateral Environmental Initiatives*, 30 Denver Journal of International Law and Policy 131, 141 & fn. 79 (2002) (same).

¹⁵ See, e.g., Danny Vinik, *The hidden impact of Trump's energy executive order*, Politico, March 30, 2017 (www.politico.com/agenda/story/2017/03/the-hidden-impact-of-trumps-energy-executive-order-000384) (quoting CEI's William Yeatman); Michael Bastasch, *EPA May Rewrite Obama-Era Regulation That Shut Down Coal Plants*, Daily Caller, April 19, 2017 (same) (<http://dailycaller.com/2017/04/19/epa-may-rewrite-obama-era-regulation-that-shut-down-coal-plants/>); *Chilling Disregard*, Daily News, Nov. 10, 2014 (discussing CEI lawsuit over records related to climate change); Eric Wolff, *Judge May Dock White House Agency Over Docs*, Politico, April 19, 2016 (<http://goo.gl/15ITht>) (same); Kevin Bogardus, *Judge weighing sanctions against science office*, Greenwire, March 24, 2016 (<http://goo.gl/df2s0E>) (same).

As provided by FOIA, I look forward to hearing from you within twenty (20) days.¹⁶ If you deny this request, please provide a written explanation for the denial including a reference to the specific statutory exemption on which you are relying, and provide the name and address of the person or body to whom an appeal should be directed. Also, please provide all segregable or non-exempt portions of otherwise exempt material.

Dated: April 24, 2017.

Sincerely,



Hans Bader
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Washington, D.C. 20005
(202) 331-2278
hans.bader@cei.org

¹⁶ See 5 U.S.C. § 552(a)(6)(A)(i).

EXHIBIT 1



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

May 10, 2010

OFFICE OF
ENVIRONMENTAL INFORMATION

Mr. Hans Bader
Competitive Enterprise Institute
1899 L Street, NW, 12th Floor
Washington, DC 20036

RE: Request Number HQ-FOI-01223-10

Dear Mr. Bader:

This is in response to your request for a waiver of fees in connection with your Freedom of Information Act (FOIA), 5 U.S.C. 552 request. Your FOIA request is seeking a copy of records referred to as the Kerry-Graham-Lieberman climate bill and any attachments or exhibits.

We have reviewed your submission and based on the information you provided, we are granting your fee waiver request. The US Environmental Protection Agency (EPA) Office of Congressional and Intergovernmental Relations, within the Office of the Administrator, will be responding to your information request for the Agency.

If you have any questions concerning this determination, please contact me at (202) 566-1667.

Sincerely,

A handwritten signature in black ink, appearing to read "Larry F. Gottesman", is written over a horizontal line.

Larry F. Gottesman
National FOIA Officer